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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,527	04/10/2001	James Hongxue Wang	11302-0231	9923

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/829,527

Applicant(s)

WANG ET AL.

Examin r

Christopher C Pratt

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-37 is/are pending in the application.
- 4a) Of the above claim(s) 32-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-31, 36 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 21-31 and 36-37, drawn to a nonwoven fabric, classified in class 442, subclass 327.
  - II. Claims 32-35, drawn to a method of making a nonwoven fabric, classified in class 264, subclass various.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by another method wherein the fibers are cast instead of drawn.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Thomas Connelly on 1/16/03 a provisional election was made without traverse to prosecute the invention of group I, claims 21-31 and 36-37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

## **DETAILED ACTION**

### ***Claim Objections***

6. Claims 22 and 37 are objected to because of the following informalities: In claim 22 please eliminate the excessive spacing. In claim 37 please correct the spelling of the word "martial." Appropriate correction is required.

### ***Declaration***

7. Applicant's declaration is moot, because Hartigan, Jr. (4097652) was not relied upon in the rejection.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claims 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 is indefinite because the specification does not define what melt strength and elasticity parameters are "sufficient" for all polymer composition comprising polyethylene oxide.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 21-22, 24-28, 30, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Brady et al (5217798).

Brady is concerned with the creation of a nonwoven material comprising a modified polyethylene oxide (col. 2, lines 52-60). Said oxide modified by grafting a polar vinyl monomer to it (col. 2, lines 1-10). Said oxide has applicant's claimed molecular weight (col. 2, lines 13-15).

With respect to claims 22 and 37, it is the examiner's position that Brady's binder composition is capable of being melt spun into a fiber. Brady teaches the binder to be used in melt blow applications (col. 4, line 45). This refers to the creation of a melt bown fiber, which inherently makes applicant's limit of melt spinning into fibers.

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With respect to claim 24, Brady does not contain any additional components that would change the basic and novel characteristics of the invention.

Brady teaches the use of an initiator (col. 6, lines 30-32).

Brady teaches applicant's claimed monomer used in applicant's claimed percentage (col. 3, lines 50-60).

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 23 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brady et al (5217798).

Brady teaches applicant's claimed viscosity (table 2), but seems to be silent with respect to the shear rate. It would have been obvious to a person having ordinary skill in the art to formulate Brady's binder composition to have a shear rate within applicant's claimed range. The skilled artisan would have been motivated to arrive at applicant's claimed range by the desire to optimize the strength and bonding properties of the material.

With respect to claim 36, the examiner takes official notice that it is common and well known in the art to utilize spunbond webs. As such, it would have been obvious to a person having ordinary skill in the art to utilize this process. Such a modification

would have been motivated by the desire to create a web having the beneficial properties associated with spunbonding. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, an applicant must specifically point the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

#### ***Allowable Subject Matter***

14. Claims 29 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not seem to teach the limitations of claim 21 with a polar vinyl monomer of polyethylene glycol ethyl ether methacrylate.

#### ***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the


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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher C. Pratt  
January 27, 2003



CHERYL A. JUSKA  
PRIMARY EXAMINER